IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Hari Singh v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.2279/2000
under Articles 226 and 227 of the Constitution of India.

Date of Order : 17th November, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Rajeev Purohit, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

The petitioner is a bonafide agriculturist and is a khatedar of agricultural land in chak 1(b) First in Tehsil and District Sriganganagar. The petitioner's land was served for irrigation supplies by distributory of Gang Canal under the policy of exchanging barkish water from tube-wells with canal water as accepted by the Government of Rajasthan in the year 1964.

The Assistant Engineer, Irrigation, North Sub Division, Sriganganagar by an order dated 22.6.2000

closed the water exchange outlet in pursuant to a decision of the State Government and a communication dated 13.6.2000 from the Chief Engineer, Irrigation Division, North, Hanumangarh. By present writ petition a challenge is given by the petitioner to the order aforesaid dated 22.6.2000.

It is contended by counsel for the petitioner that the order dated 13.6.2000 is not an order to close water exchange outlet pertaining to the petitioner as the aforesaid letter relates to getting information by Chief Engineer, Irrigation, North, Hanumangarh with regard to the agriculturists having exchange system. It is also contended by counsel for the petitioner that before closing water exchange outlet no notice was given by the respondents to him. Beside the above, it is also contended by counsel for the petitioner that under Section 32 of the Rajasthan Irrigation and Drainage Act, 1954 the authority empowered for stoppage of water course is Divisional Irrigation Officer but in the present case the water exchange outlet is ordered to be closed in pursuance of a decision of the State Government and also in pursuance of the communication of the Chief Engineer, Irrigation, North, Hanumangarh, therefore, it is a case of abdication of powers.

A reply to the writ petition is filed on behalf of the respondents stating therein that the

petitioner was lifting water by installing and using seven horse powers motor and he was also not maintaining the log book as required for utilising canal water, therefore, his water exchange outlet was closed.

Heard counsel for the parties.

From perusal of the order impugned dated 22.6.2000 it is apparent that the water exchange outlet of the petitioner was closed on two counts; viz. (1)decision of the State Government, and (2)order dated 13.6.2000 passed by the Chief Engineer. The order dated 13.6.2000 passed by the Chief Engineer is available on record as Anx.1. The order dated 13.6.2000 relates to a decision taken by the State Government for stopping the system of closing down the water exchange system or water barkishing by tube-well in exchange to canal water system while deciding an application preferred by Smt.Indira Devi wife of Radheyshyam. By the aforesaid order the Chief Engineer sought details with regard to agriculturists getting irrigation facility under the scheme aforesaid. The decision of the State Government is referred in the order/letter dated 13.6.2000 but what is the decision and in what manner it was taken is not made clear by the respondents even in their reply. It appears that the Assistant Engineer without having any specific order or directions closed the water exchange outlet.

In reply to the writ petition it is averred that a meeting was held on 26.4.2000 in Chairpersonship of the Irrigation Minister of Government of Rajasthan and in that meeting members of Legislative Assembly from Sriganganagar and Hanumangarh Districts brought to the notice that in Gang Canal the cultivators throw barkish water through their tube-well and in lieu of this the cultivators get extra water from the canal. In the said meeting a decision was taken to brought into the notice of the State Government all the cases where such system was in prevalence. On basis of the decisions above water exchange outlet of the petitioner was closed. A copy of the minutes of the meeting which held on 26.4.2000 is placed on record as Anx.7. From perusal of the minutes it does not reveal that any decision was taken by the Government to close the water exchange outlets. The decision taken was only to bring in notice the particulars of cultivators who were using water exchange outlets. The decision of the State Government dated 26.4.2000, therefore, could not be a reason to close down the water exchange outlet.

It is not at all in dispute that the petitioner is getting irrigation facility from last about three decades under water exchange system and, therefore, before withdrawing the same appropriate course before the respondents was to give atleast a

notice to the petitioner with regard to discontinuation of water under exchange system. The land of the petitioner being irrigated by the water of canal procured in exchange of tube-well water, therefore, it certainly create a civil right which could not be discontinued in violation of principles of natural justice.

The reasons given by the respondents in reply to close the water exchange outlet that the petitioner was lifting power by installing a 7HP motor and he was not maintaining log book, cannot be taken into consideration while adjudicating the present writ petition as those reasons are not shown as the reasons to close the water exchange outlet in the order impugned dated 22.6.2000. It is well settled that the reasons to an order cannot be supplied and supplemented by reply or additional affidavits.

In view of whatever discussed above this writ petition succeeds and, therefore, is allowed. The order impugned dated 22.6.2000 is quashed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.